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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 11, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS ON JURISDICTIONAL GROUNDS

JURISDICTION

The Court has original jurisdiction of this suit under Article III, Section 2, Clauses 1 and 2, of the Constitution of the United States and 28 U. S. C. 1251(b)(2). On March 26, 1956, the Court entered its order granting the United States leave to file its complaint herein. 350 U.S. 90.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

Article III, Section 2, of the Constitution of the United States provides:

> The judicial Power shall extend * * * to Controversies to which the United States shall be a Party; * * *
>
> In all Cases affecting Ambassadors, other public

> Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. * * *

Title 28, United States Code, Section 1251(b), provides:

> The Supreme Court shall have original but not exclusive jurisdiction of:
>
> * * * * *
>
> (2) All controversies between the United States and a State;
>
> * * * * *

QUESTIONS PRESENTED

1. Whether this Court lacks jurisdiction to render a decision that involves ascertaining how a political question has been decided by the political branches of the Government.

2. Whether this Court lacks original jurisdiction of a suit by the United States against a State.

3. Whether the State of Louisiana is immune from suit by the United States without the consent of the State.

STATEMENT

On June 5, 1950, this Court held that rights in the submerged lands and minerals underlying the Gulf of Mexico, extending twenty-seven marine miles seaward from the ordinary low-water mark and outer limit of inland waters along the coast of Louisiana, belonged to the United States and not to the State. *United States* v. *Louisiana*, 339 U. S. 699. By the Submerged Lands Act of May 22, 1953, Congress granted to the State, with exceptions not now material, the submerged lands

and minerals within the State's boundaries as those boundaries existed at the time when the State entered the Union or as approved by Congress prior to the Act, or as extended to a distance of three marine miles, but in no event more than three leagues, from the coast line. "Coast line" was defined as the line of ordinary low water along that portion of the coast which is in direct contract with the open sea, and the line marking the seaward limit of inland waters. 67 Stat. 29, 43 U.S.C. (1952 ed.) Supp. III, 1301-1315. Louisiana claims that its boundary is, and was when it entered the Union, three leagues from the coast; consequently it claims title under the Submerged Lands Act to the submerged lands and minerals extending to that distance. The United States contends that the national boundary is three marine miles from the coast, and that the State boundary and the grant made by the Submerged Lands Act extend no greater distance. On December 19 ,1955, the United States served on the defendant and filed with the Court its motion for leave to file its complaint herein to quiet its title to the submerged lands and minerals lying more than three marine miles from the coast of Louisiana. Louisiana's "Opposition to Motion for Leave to File Complaint against the State of Louisiana, and Brief in Support of Opposition" was filed on February 20, 1956. On March 26, 1956, this Court granted the motion of the United States and allowed the State 30 days to answer. 350 U.S. 990. By order of April 16, 1956, the State's time to answer was extended 60 days, or until June 25, 1956. The State's motion to dismiss on jurisdictional grounds was filed on June 22, 1956. No answer has been filed.

ARGUMENT

I

It Is Not Beyond the Jurisdiction of this Court to Ascertain How a Political Question Has Been Decided by the Political Branches of the Government

By the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. (1952 ed.) Supp. III, 1301-1315, the United States granted to coastal States certain submerged lands within their boundaries. The United States now seeks to quiet title to submerged lands more than three nautical miles from the coast of Louisiana, upon the ground that the boundary of the nation, and therefore that of the State, is no more than that distance from the coast. Louisiana asserts as the first ground in support of its "Motion to Dismiss on Jurisdictional Grounds" (pp. 1-2, 5-8) that the case consequently involves decision of a political question, which is beyond the jurisdiction of the courts.

The contention is unsound. The United States does not ask the Court to make a policy determination establishing the national boundary. It asks the Court to ascertain where the boundary has been established by the political branches of the Government, and to adjudicate the rights of the parties in accordance therewith. This Court has repeatedly recognized its jurisdiction to entertain a suit of such character.

In *Vermilya-Brown Co.* v. *Connell,* 335 U.S. 377, 380, the Court said, "Recognizing that the determination of sovereignty over an area is for the legislative and executive departments * * * does not debar courts from examining the status resulting from prior action." The cases cited by Louisiana are to the same effect. All were cases where the decision depended on questions of sovereignty, either domestic or foreign.

None was dismissed as beyond the jurisdiction of the courts. All were decided on their merits, upon the premise that as to the political question the Court was bound to accept and give effect to the determination made by the political branches of the Government. The passages that Louisiana quotes (pp. 6-8) do not say, as the State seems to suppose, that the Court cannot inquire how the political branches have answered political questions. What they do say is that the Court cannot inquire as to "the propriety of what may be done" by the political branches (*Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 302), that "its duty commonly is, to decide upon individual rights, according to those principles which the political departments of the nation have established" (*Foster & Elam* v. *Neilson*, 2 Pet. 253, 307), and that national boundary is a political question, in the discussion of which "the courts of every country must respect the pronounced will of the legislature" (*Garcia* v. *Lee*, 12 Pet. 511, 517). The United States is of course in complete agreement with that view.

There is likewise no merit in Louisiana's contention (Br. 8) that, in leaving to this Court the determination of disputes regarding the location of State boundaries, Congress attempted to delegate its legislative powers. The settlement of disputes as to the results of past actions, political or otherwise, is a judicial and not a legislative function.

II

This Court Has Original Jurisdiction of Suits by the United States Against States

Article III, Section 2, Clause 1, of the Constitution provides that the federal judicial power extends to

controversies to which the United States is a party. The United States is the plaintiff. Consequently the case is within the federal judicial jurisdiction.

Article III, Section 2, Clause 2, of the Constitution provides that this Court shall have original jurisdiction of cases in which a State is a party. The State of Louisiana is the defendant. The case is therefore within the original jurisdiction of this Court. Title 28, U.S.C., Section 1251(b), is to the same effect.

Louisiana relies (Br. 15-16) on *Cherokee Nation* v. *Georgia*, 5 Pet. 1, for the proposition that "the United States is not a state, or a foreign State which may sue in the Supreme Court, in the sense in which the terms are used in the Constitution" (Br. 16). In that case an Indian tribe sought to sue a State. The Court held that the case did not come within any head of federal judicial jurisdiction under Article III, Section 2, Clause 1, of the Constitution—specifically, that the suit was not one between a State and a foreign state, as the plaintiff contended. *Lane* v. *Pueblo of Santa Rosa*, 249 U.S. 110, 112-113. As shown above, the present suit comes under another head of federal jurisdiction: controversies to which the United States is a party. Accordingly, the *Cherokee Nation* case is irrelevant.

Louisiana says (Br. 18-19):

> Regardless of the fact that this Court may have rendered judgments in other cases of the United States against particular states, such does not constitute *stare decisis* or precedent prejudicial to the State of Louisiana herein.
>
> * * * * *
>
> In such cases the fact that other states, either by design or oversight consented to be sued, or failed

to raise the constitutional objection to lack of jurisdiction in this Court to entertain such action by the United States against a particular state, cannot be considered as authority over-riding the action of the Constitutional Convention in refusing to grant this Court original jurisdiction in such controversies.

The fact is that in the case of *United States* v. *Louisiana*, No. 13, Original, October Term, 1948, and No. 12, Original, October Term, 1949, and October Term, 1950, the State of Louisiana challenged the jurisdiction of this Court in ten different documents filed at various stages of the case, nine of which urged the point now under discussion.[1] This Court overruled the contention in each instance. *United States* v. *Louisiana*, 337 U.S. 902; 337 U.S. 928; 338 U.S. 806; 339 U.S. 699, 701-702; 340 U.S. 856; 340 U.S. 939. It should do the same here. Indeed, having failed to prevail on that issue in earlier litigation with the United States, Louisiana

[1] Supplemental Memorandum of Louisiana in Support of Its Objections to Motion by the Federal Government for Leave to File a Complaint against Louisiana (filed Feb. 9, 1949), pp. 5-7; Brief in Opposition to the Motion of the Federal Government for Leave to File a Complaint against Louisiana (filed May 5, 1949), pp. 2-4, repeated practically verbatim by Louisiana's present Brief in Support of Motion to Dismiss on Jurisdictional Grounds, pp. 10-12; Petition for Rehearing (filed May 31, 1949), p. 6; Demurrer, or Motion to Dismiss on Jurisdictional Grounds, and Conditional Motions (filed Sept. 1, 1949), pp. 3-10, repeated practically verbatim by Louisiana's present Brief in Support of Motion to Dismiss on Jurisdictional Grounds, pp. 10-19; Answer (filed Nov. 9, 1949), Second Defense, Par. I, p. 4; Brief of Defendant Opposing Plaintiff's Motion for Judgment and Supporting Defendant's Motion to Dismiss and Other Defenses (filed March 20, 1950), p. 2; Petition for Rehearing (filed July 14, 1950), Par. I, pp. 1-2; Petition for Rehearing on Decree (filed Jan. 26, 1951), pp. 2-3; and Petition for Rehearing from Decree (filed Jan. 26, 1951, at Pt. II of the preceding Petition), pp. 2-5.

should be estopped to raise the point now. There has been a decisive former adjudication between the parties on this very question.

III

The United States Can Sue the State of Louisiana Without the Consent of the State

The United States can sue the State of Louisiana without the consent of the State. *United States* v. *Louisiana,* 339 U.S. 699, 701-702; *United States* v. *Texas,* 143 U.S. 621; see *United States* v. *West Virginia,* 295 U.S. 463, 470.

CONCLUSION

The motion to dismiss on jurisdictional grounds should be denied.

Respectfully submitted,

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